

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO**

**NEW MEXICO TOP ORGANICS – ULTRA HEALTH, Inc.,**

**Plaintiff,**

**Case No. 1:17-cv-00599-JAP-LF**

**v.**

**LARRY KENNEDY, DAN MOURNING, and  
RAINA BINGHAM, in their official capacities,**

**Defendants.**

**AFFIDAVIT OF JOHN C. BIENVENU**

STATE OF NEW MEXICO    )  
  ) ss:  
COUNTY OF SANTA FE    )

JOHN C. BIENVENU, being first duly sworn upon his oath, deposes and states as follows:

1.     This Affidavit is submitted in support of Plaintiff's Motion for Attorney Fees and Costs. The facts set forth herein are true of my own personal knowledge and I am competent to testify thereto.

2.     I am a member in good standing of the State Bar of New Mexico and the State Bar of California (inactive status). I am admitted to practice before the United States District Court for the District of New Mexico, the United States District Court for the Northern District of California, the United States District Court for the District of Arizona, the United States Court of Appeal for the Ninth Circuit, the United States Court of Appeal for the Tenth Circuit, and the United States Court of Federal Claims.

3. I received a J.D. degree (“With Distinction”) from Stanford Law School in 1988 and I have been practicing law continuously for over 30 years. From 1988 to 1990, I practiced civil litigation with the law firm of Brobeck, Phleger & Harrison in San Francisco and Palo Alto, California. From 1990 to 1993, I practiced civil litigation with the law firm of Rothstein, Donatelli, Hughes, Dahlstrom, Cron & Schoenburg in Santa Fe, New Mexico. From 1993 to 2003, I practiced civil litigation in my own law office. From January 1, 2004 to October 31, 2016, I was a partner with the law firm of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP. Since November 1, 2016 I have been the principal in the Bienvenu Law Office.

4. My practice consists exclusively of civil litigation, primarily in the areas of class actions, civil rights, employment law, and other complex litigation matters. I am rated AV by Martindale-Hubbell and I have been listed in “The Best Lawyers in America” and “Southwest Super Lawyers” every year since 2008. I was selected as “Lawyer of the Year” by Best Lawyers in 2018 (Employment Law-Santa Fe), 2015 (Employment Law-Santa Fe) and 2014 (Labor and Employment Litigation-Santa Fe).

8. I have been involved in numerous civil rights cases and other fee-shifting litigation. Based on my involvement in such litigation, I am very familiar with and knowledgeable about contemporary market rates for attorneys in New Mexico practicing in these areas. I have reviewed and studied numerous affidavits in support of fee applications as well as decisions of the federal and state courts awarding fees in this jurisdiction.

9. As a supervising partner with the Rothstein Law Firm from 2003 to 2016, I was

jointly responsible for setting hourly billing rates for all attorneys in the firm at all levels of experience, and was individually responsible for setting hourly billing rates for all attorneys working on matters for which I was the responsible partner. In addition, for such matters, I was personally responsible for reviewing all billing entries and invoices and for determining what was appropriately charged to clients. Accordingly, I am very familiar with the prevailing hourly rates charged and received in Santa Fe and in New Mexico for civil rights matters and other civil litigation matters for attorneys at all levels of experience and expertise, from those just out of law school to the most experienced senior partners.

10. I have reviewed the motion submitted by Plaintiff's counsel in this case. I am familiar with Mr. Egolf's background, skill, experience, and reputation as an attorney. Mr. Egolf graduated magna cum laude from law school in 2005 and has been practicing law since then with significant experience in complex civil litigation. Based on my experience and knowledge of actual billing rates charged and received for attorneys practicing civil litigation in this locality (excluding attorneys paid by insurance companies, whose rates are discounted), it is my opinion that the prevailing market rate in this locality for an attorney of Mr. Egolf's skill, reputation and years of relevant experience is \$325 to \$375. This compares with actual hourly rates charged and received at my former firm of \$375 for partners of comparable experience and performing similar services. Those standard rates have been in effect since December 2011.

11. I am also familiar with Ms. Caffrey's background, experience and reputation as an attorney. Ms. Caffrey graduated magna cum laude from law school in 2011 and has been practicing law since then with significant experience in complex civil litigation. It is my opinion

that the prevailing market rate in this locality for an attorney of Ms. Caffrey's skill, reputation and years of experience is \$225 to \$275. This compares with standard hourly rates charged and received by my former firm of \$225 to \$275 for associate attorneys of comparable experience, performing similar services. Those standard rates have also been in effect since December 2011.

12. My opinions take into account the level of experience that Mr. Egolf and Ms. Caffrey have in the area of civil rights litigation. Both Mr. Egolf and Ms. Caffrey have significant experience in complex civil litigation, including civil rights litigation. In my experience as an attorney responsible for setting and reviewing rates charged and received in civil rights and other litigation matters, the most important factor in determining appropriate rates is years of experience as a practicing attorney, and in my experience and opinion it would not be normal or appropriate to further discount the hourly rates set forth above for either Mr. Egolf or Ms. Caffrey as compared to attorneys with more civil rights experience but comparable years of experience, skill and reputation.

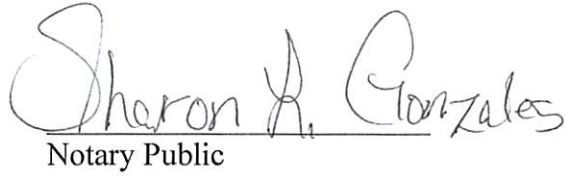
13. I have reviewed the specific time entries submitted with the motion. Based on my experience in performing similar work over the past 30 years, in supervising others in the performance of such work, and in reviewing time entries for billing to clients and for fee applications, it is my opinion that these hours were reasonably expended.



FURTHER AFFIANT SAYETH NAUGHT.

  
JOHN C. BIENVENU

SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of January, 2019, at Santa Fe,  
New Mexico.

  
Notary Public

My commission expires:

11-3-2021



OFFICIAL SEAL  
Sharon Gonzales  
NOTARY PUBLIC-State of New Mexico  
My Commission Expires 11-3-2021